

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL012809)**

INTRODUCTION

On 1/28/09, the Nevada Superintendent of Public Instruction received a complaint dated 1/27/09 from a parent alleging violations in the special education program of a student with disabilities attending Clark County School District (CCSD). An investigation team was appointed to examine the allegations that the CCSD: 1) did not make agreed upon changes to the student's individualized educational program (IEP) without conducting an IEP meeting as promised; 2) had not implemented certain parts of the student's IEP; 3) did not provide meeting dates for an IEP that were agreeable to the parent; and 4) did not provide an education for the student in the least restrictive environment because the student was not provided an education in the home-zoned school.

The parent also stated that she would need a copy of a communication log (daily log) that the school had taken from her, had refused to return to her and allegedly altered. The parent was referred to the district to request a copy of the daily log and share any concerns about the contents and alleged alterations of the log. The parent was also informed of her rights under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99) in the event she was dissatisfied with the response from CCSD regarding the daily log, and was given the contact information for the office at the U.S. Department of Education that oversees the implementation of FERPA for further assistance.

Subsequent to the filing of this complaint, the investigation team learned that a resolution agreement had been entered into on 8/21/08 (Settlement Agreement) between the parent and the district. The parent alleged that the district failed to comply with the conditions of the Settlement because it discontinued the student's intervention behavior plan at an IEP meeting. The investigation team also learned that the location of the student's placement was addressed in the Settlement Agreement. The parent was informed that enforcement of resolution agreements was not within the jurisdiction of the Nevada Department of Education (NDE) to investigate through the special education complaint procedures and that enforcement must be pursued in any Nevada court of competent jurisdiction or in a district court of the United States (NAC §388.307(11)(b)).

The parent also, subsequent to the filing of the complaint, indicated that she was in disagreement with the contents of the 2/2/09 IEP. The parent was informed that if she had a disagreement with the contents of the 2/2/09 IEP, she could request a due process hearing if her efforts to have the district respond to her concerns informally or with another IEP meeting were unsuccessful.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of NDE:

- Issue 1: Whether CCSD complied with state requirements to implement the student's 9/24/08 IEP, specifically with respect to certain accommodations and modifications.
- Issue 2: Whether CCSD complied with state requirements when it refused to implement changes verbally agreed upon at a 1/5/09 meeting.
- Issue 3: Whether CCSD complied with federal requirements to make reasonable efforts to involve the student's parent in the development of a revision of the 9/24/08 IEP.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parent
- Principal
- Southeast region director
- Southeast region coordinator
- Special education teacher
- General education teacher
- Assistant principal
- Compliance monitor

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. 9/24/08 IEP
2. 2/27/08 behavior intervention plan (BIP)
3. Meeting notices dated 1/6/09, 1/7/09, 1/8/09, 1/13/09, 1/20/09, 1/21/09, 1/28/09
4. 2/2/09 IEP
5. 2/2/09 Prior Written Notice (PWN) of Intent to Implement 2/2/09 IEP
6. IEP progress reports dated 11/21/08 and 2/2/09
7. Reading test results
8. Daily reports of student's progress for each of the behavior goals from 9/8/08-2/2/09 (data sheets)
9. Behavior mentor observation report dated 1/8/09
10. Student's daily behavior sheets
11. Student's status record dated 9/4/08 through 2/9/09
12. 2008/2009 school calendar
13. 2008/2009 attendance records
14. Daily log dated 8/27/08—1/22/09
15. List of Social Stories taught in 2008/2009 school year up to 1/17/09
16. "Character Traits Schedule"
17. List of Adaptive Devices available in student's classroom for 2008/2009 school year
18. List of Memory Devices/Visual Grids used in the 2008/2009 school year
19. Samples of Thinking Maps, Addition and Subtraction Frames and other Visual Grids
20. Settlement Agreement dated 8/21/08
21. E-mails dated 12/18/08 through 1/25/09

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007)
- *Ms. S. ex rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115 (9th Cir. 2003)
- *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072 (9th Cir. 2003)

FINDINGS OF FACT

This investigation involved a second grade elementary school special education student with autism. A review of documents, as well as interviews with the parent, the principal, the southeast region director, the southeast region coordinator, the special education teacher, the general education teacher, the assistant principal and the compliance monitor revealed the following facts.

The student had a 5/13/08 annual IEP in place at the beginning of the 2008/2009 school year. The 5/13/08 annual IEP was revised on 9/24/08. The parent and the teachers primarily communicated using a daily log.

IEP Implementation

The student's 9/24/08 IEP contained the following accommodations which are at dispute in this investigation: 1) "The [student] will have access [to] materials that may reduce off task behavior (pencil tube, move and sit, etc)...prior to off task behavior"; 2) "Teach the use of rhymes, visual grids, mnemonic devices and other 'memory hangers' to aid in auditory memory tasks...upon occurrence"; 3) "Student will have access to social stories [which would be] sent home...when a new story is presented"; 4) "Role modeling events to practice [student's] social skills...weekly"; 5) "Parent will be given a list of targeted facial/body expressions...[when those skills are taught]" and 6) "A behavior sheet to be sent home...daily". There were no further descriptions concerning any requirements for these accommodations. These accommodations were related to the student's annual behavioral and academic goals.

A list of devices and other options that were available to the student and provided to the investigation team included "adaptable" items to assist the student in avoiding and reducing off-task behaviors. The devices included a wedge, pencil tubes, squishy balls, pencil grips, highlighter tape, and highlighter reading strips. The student was also permitted to stand, sit or lie on the floor to complete work. The general education teacher reported that it was the student's choice as to whether to use the adaptable items available and the student's choice regarding sitting, standing or lying on the floor to complete work.

The special education teacher, general education teacher and the principal reported that there were a number of memory and similar devices used in the classroom. A list of memory devices included "visual grids", "thinking maps", "place value" charts, "addition and subtraction frames", a "KWL" chart, the "friendly letter format" song and the "hundred chart". The teachers reported that these devices were used in teaching the student auditory and other tasks. Examples of some of these materials were provided to the investigation team.

The special education teacher and the general education teacher stated that the social stories were taught to the student in order to assist him in reaching the behavioral goals in the 9/24/08 IEP. A list of social stories addressing "trying new things", "listening skills", "respecting personal space", and "doing your best", were taught to the student on 10/22/08, 11/12/08, 12/3/08 and 1/7/09 respectively. Other social stories taught weekly by the teacher to the student were listed in a "Character Traits Schedule". The subjects of the weekly social stories were listed as "fairness", "respect", responsibility", "trustworthiness", "caring" and "friendship". The social stories addressed behaviors that were included in the student's behavioral goals and behavior intervention plan (BIP). The general education teacher reported that copies of each of these social stories, as well as the ones she taught as discussed in the paragraph below, were placed in the daily log and sent home to the parent each time a new one was first introduced by the counselor. The daily log included some notations that the social stories were sent home. The parent reported that she did not receive copies of the social stories each time new ones were first used.

The general education teacher and the special education teacher reported that role-playing took place throughout the school day for skills that the student was having trouble with so that the solutions could be modeled with the participation of other students. For instance, if the student was having difficulty with a problem or skill, other students would be asked to role play alternatives to dealing with the problem or the student would be asked to role play alternatives. In addition, all the school procedures and rules were discussed, role-played and reviewed at the beginning of the year and again in January with the student as well as with other members of the class. "Raising hands and waiting to be called" on, "focusing on teacher instruction", "working independently", "cooperating in groups" and "how to react when angry or frustrated" were some of the subjects addressed in role playing.

The special education teacher and the general education teacher reported that the student had no problems reading any facial/body expressions and therefore there were no targeted facial/body expressions to work on. Therefore, they stated that there was nothing to send home for the parent to work on with regard to facial/body expressions as required in that accommodation. Data sheets show that from the day the student began attending school for the 2008/2009 school year, the student had demonstrated the ability to interpret appropriate body language including gestures, facial expressions and use of body language 100% of the time.

In addition to the requirement in the accommodations that a daily behavior sheet be sent home, the student's BIP required that "a report concerning the [student's] behavior be sent home each day". There were no further requirements stated with regard to the format of either the daily behavior sheet as required in the accommodation or of the report that was required each day in the BIP. The parent and the teachers reported that a daily behavior sheet was sent home each day. The parent reported that the daily behavior sheet did not have the symbols and goals on it that she or the student wanted. The special education or general education teacher wrote short narrative reports of the student's behavior each day in the daily log.

The 9/24/08 IEP had seven behavioral goals and four academic goals that were to be achieved by the annual review date in May 2009. Data sheets were kept for each of the behavioral goals. The data sheets, IEP progress reports, and reports by the special education teacher, general education teacher, principal, assistant principal, the behavior mentor and the southeast region coordinator show that the student had mastered the seven behavioral goals by the week of 12/8/08.

The first trimester IEP progress reports and classroom test results indicate that by 11/21/08 the student had made "adequate progress" towards the three academic goals that had been addressed to date in the classroom. The fourth academic goal was not scheduled to be addressed until the second trimester. Other test results showed that the student was achieving at grade level in reading and math, and at near grade level in writing by early January.

Revision to IEP without a Meeting

The parent met with the school principal and the southeast region assistant superintendent on 1/5/09. The principal reported that the meeting was set up to discuss concerns the parent had expressed to the district during the winter break. At the meeting, the parent stated that she wanted to change the daily behavior sheet to include a new goal and different symbols. The parent also wanted a change in the social stories accommodation to include using a specific set of books and to have a new story introduced every three weeks. Although there was a verbal agreement by the CCSD to make some of the parent's requested changes to the IEP and delay reconvening an IEP meeting until some time in the future, there was no written agreement to revise the 9/24/08 IEP without convening a meeting of the IEP committee. Nor did the district send notice to the parent refusing to implement the changes that were discussed, even though subsequent to the 1/5/09 meeting, the parent sent a number of emails, and made a number of phone calls over the next several weeks urging the district to make the changes she wanted to the IEP without convening an IEP meeting.

Parent Involvement at IEP Meeting

The principal and the compliance monitor stated that on 1/6/09, the district, after reviewing both the parent's request for changes at the 1/5/09 meeting as well as data on the student's progress, determined that it was necessary to reconvene the IEP committee as soon as possible to review and revise the 9/24/08 IEP as appropriate, rather than to implement the changes which had been discussed and agreed upon during the 1/5/09 meeting. The district sent out meeting notices on 1/6/09 proposing a 1/30/09 meeting date, and subsequently sent out meeting notices dated 1/7/09, 1/8/09, 1/13/09, 1/20/09, 1/21/09 and 1/28/09 setting a tentative date of 2/2/09 for the IEP meeting. The meeting notices stated the proposed actions at the meeting were: "review/revise IEP", "change placement" and "change in special education related services". The meeting notices also offered the parent an opportunity to propose

alternative dates that would be mutually agreeable if the proposed date was unacceptable. The special education teacher noted in the student's status log that she and the assistant principal called the parent on 1/7/09, informed her of the proposed IEP meeting date and requested that the parent provide alternative dates after the parent stated to them that the 2/2/09 meeting date would not work for her.

In addition to the meeting notices described above, the parent and district communicated about the scheduling of the proposed IEP meeting in the daily log as well as through email correspondence. The parent asked the district for alternative dates in a 1/14/09 entry. The parent provided alternative dates of 3/17/09-3/19/09. Subsequently, the district told the parent to offer dates for the meeting to take place no later than 2/6/09, and in a 1/15/09 entry, the district provided alternative dates of 2/3/09 and 2/4/09 and asked the parent to select one, although the district had already been notified that the parent was not available for a meeting during the entire week of 2/2/09. In a subsequent email correspondence, the parent asked if she could provide alternative dates beyond the 2/6/09 deadline. Her request was acknowledged by the district in an email on 1/22/09, and the parent was asked to submit alternate dates. In response, on 1/26/09 the parent offered additional alternate dates of 2/20/09, 2/27/09, and 3/4/09. The district then rejected the parent's request for rescheduling and proceeded to conduct the IEP meeting on 2/2/09 without the parent in attendance.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether CCSD complied with state requirements to implement the student's 9/24/08 IEP, specifically with respect to certain accommodations and modifications.

This complaint concerned an allegation that the district did not implement certain of the accommodations in the student's 9/24/08 IEP and did not implement a reporting requirement of the BIP.

State regulations at NAC §388.281.6(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee." However, "...when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007).

In this case, the 9/24/08 IEP contained six accommodations and a BIP reporting requirement that addressed the student's behavioral and/or academic goals that the parent alleged were not implemented. The district was obligated to implement the accommodations and the BIP reporting requirement as written. Documentation showed that five of the six accommodations and the BIP reporting requirement were implemented as written. One accommodation was not implemented because the student had achieved 100% mastery of the ability to recognize facial/body expressions from the time the student began the 2008/2009 school year, and that was what this accommodation addressed. The investigation team determined that it was reasonable that the district did not implement the accommodation since the student demonstrated 100% mastery of the ability to recognize facial/body expressions, which the accommodation addressed.

While there were conflicting reports as to whether copies of all the new social stories were sent home to the parent as required by the accommodation dealing with the use of social stories, there was documentation that some had been sent home. In addition, the student had achieved mastery of the seven behavioral goals that the social stories had been designed to assist with.

The complaint investigation team determined that, based on the student's mastery of this skill, not providing a list of targeted facial/body expressions to the parent and not providing documentation of all of

the new social stories to the parent, were minor discrepancies between the services provided to the student and those required by the IEP and did not result in a material failure to implement the IEP.

Therefore, the investigation team concluded that the CCSD complied with state regulations to implement the student's 9/24/08 IEP, specifically with respect to certain accommodations in the student's 9/24/08 IEP and a reporting requirement of the BIP.

Issue 2: Whether CCSD complied with state requirements when it refused to implement changes verbally agreed upon at a 1/5/09 meeting.

This complaint concerned an allegation that the district refused to implement changes to the student's IEP verbally agreed upon during a 1/5/09 meeting.

State regulations at NAC §388.281(7)(a) state "Upon written agreement of the parent of the pupil with a disability and the authorized representative of the public agency, the pupil's individualized educational program may be revised without convening a meeting of the committee."

Additionally, state regulations at NAC §388.300(5)(c) state that a public agency shall notify the parents of a pupil with a disability, within a reasonable period of time before any proposed or refused action regarding the provision of a free appropriate public education to the pupil."

The dispute in this case concerns changes to the student's IEP that were discussed in a meeting held on 1/5/09, and the subsequent decisions made by the CCSD about whether the changes discussed in that meeting would be implemented. The meeting on 1/5/09 included the parent, the principal, and an associate superintendent, and it was held to discuss some changes the parent wanted made to the student's 9/24/08 IEP. Those changes included making changes to the daily behavior sheet by adding a goal and using different symbols. In addition the parent wanted the social stories to be provided with a specific frequency different than that required by the 9/24/08 IEP. At the conclusion of the meeting, there was a verbal agreement between the parent and the district administrators to make some of the changes and to wait to reconvene an IEP meeting until the changes had been in place for a period of time. Notably, these changes were not written into any revised IEP document, and there was no written agreement reflecting an agreement between the parent and an authorized representative of the district not to convene the IEP committee for the purpose of revising the IEP. Although state regulations permit the revision of a student's IEP without convening an IEP meeting, there must be a written agreement between the parent and the school district to do so, and the changes made must be reflected in a revised IEP. In this case, there is no evidence that the meeting on 1/5/09 complied with these requirements, and no revised IEP was properly developed.

The next day, the CCSD apparently reconsidered the approach that had been discussed and agreed upon during the 1/5/09 meeting, and determined that an IEP meeting should be convened to make any changes to the student's IEP. The parent, on the other hand, continued to urge the CCSD to implement the changes that had been discussed and agreed upon. Because the CCSD was now electing not to implement the changes, the CCSD was required to provide written notice of its refusal to do so. No written notice of this refusal was provided.

Therefore, the investigation team concluded that the CCSD failed to comply with state regulations when it did not send written notice to the parent refusing to implement the changes that were agreed upon in the 1/5/09 meeting.

Issue 3: Whether CCSD complied with federal requirements to make reasonable efforts to involve the student's parent in the development of a revision of the 9/24/08 IEP.

This complaint concerned an allegation that the district did not provide an opportunity for the parent to participate in a revision to the 9/24/08 IEP meeting because it did not arrange a mutually agreed upon time and date for the meeting.

Federal regulations at 34 CFR §300.322(a)(1) and (2) state that “Each public agency must take steps to ensure that one or both of the parents...are present at each IEP Team meeting or are afforded the opportunity to participate, including—(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place”.

Case law has interpreted the requirements for scheduling meetings at mutually agreed upon times and places. “Where the school district has repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process [and the parent refuses to cooperate], the school district has not violated its obligation ... to take steps to ensure parents are afforded the opportunity to participate. *Ms. S. ex rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1133 (9th Cir. 2003). On the other hand, when parents attempt to reschedule meetings, as opposed to refusing repeatedly to participate, a school district may violate its obligation. *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072 (9th Cir. 2003).

In this case, the district on 1/6/09 reviewed the IEP progress reports and other data indicating that the student had mastered the majority of the annual goals in the 9/24/08 IEP. The district decided that the student’s 9/24/08 IEP committee should be reconvened as soon as possible to review and revise the IEP as appropriate. The district provided notice to the parent, with a phone call, six meeting notices, and three daily log entries, proposing a meeting date of 2/2/09. The district was informed by the parent that this meeting date would not work, as she would be out of town for that entire week, and she offered the dates of 3/17/09-3/18/09 as alternatives. In subsequent written communication the district stated that the meeting must be held no later than 2/6/09, and offered alternative meeting dates of 2/3/09 and 2/4/09, which the parent was not able to attend, as had been previously made known to the district. The parent and the district then agreed via email communication that the parent could offer additional alternative meeting dates, including dates beyond the original window of no later than 2/6/09, which she did, yet in subsequent emails the district seemed unwilling to consider alternate dates. In the end, the parent offered six alternative meeting dates (2/20/09, 2/26/09, 3/4/09, 3/17/09, 3/18/09, and 3/19/09). Ultimately, the district would not select a date among the alternatives offered by the parent, and proceeded to hold the meeting on 2/2/09, in spite of the parent’s offer of alternate dates because she was out of town that week.

Because the parent offered alternate dates which appear to have been reasonable under the circumstances, and because the district offered in an email to consider alternate dates before going forward with holding a meeting the parent could not attend, the investigation team determined that the requirement to meet at a mutually agreed upon date and time was not satisfied in this instance.

Therefore, the investigation team concluded that the CCSD failed to comply with federal regulations to make reasonable efforts to include the parent in the development of the student’s 2/2/09 IEP.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not provide written notice refusing to implement the changes that had been verbally agreed upon during a meeting, and the district did not make reasonable efforts to involve the parent in the development of the student’s 2/2/09 IEP.

Professional Development/Training

Within 30 days of receipt of this report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must:

1. Include a plan to provide professional development for teachers and administrators at the school site on the requirements for:
 - a. Sending written notice of proposals and refusals related to the free appropriate public education of students with disabilities.
 - b. Making reasonable efforts to involve parents in the development of their students' IEPs.
2. Include a plan to submit to the NDE documentation that the parent was afforded a reasonable opportunity to participate in the development of the student's annual IEP, which is due to be completed no later than 5/13/09.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.